



## MEMORANDUM

### MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

*We strive to be caring, professional and fair*

To: Monroe County Development Review Committee &  
Townasley Schwab, Senior Director of Planning & Environmental Resources

From: Joseph Haberman, AICP, Planning & Development Review Manager

Date: April 5, 2012

Subject: *AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY CODE TO ESTABLISH SECTION 110-144, UNLAWFUL USES AND/OR DEVELOPMENT, TO CREATE A REGULATION DIRECTING GROWTH MANAGEMENT DIVISION STAFF ON HOW TO REVIEW BUILDING PERMIT APPLICATIONS FOR A SITE WITH A KNOWN UNLAWFUL USE AND/OR DEVELOPMENT THAT IS CAPABLE OF CODE ENFORCEMENT PROSECUTION UNDER MONROE COUNTY CODE CHAPTER 8, PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.*

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Meeting: April 24, 2012

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I REQUEST

The Planning & Environmental Resources Department is proposing an amendment to the text of the Monroe County Code (MCC) to establish a new section, §110-144, in order to provide a regulation directing Growth Management Division staff on how to review building permit applications for a site with a known unlawful use and/or development that is capable of code enforcement prosecution under MCC Chapter 8.

II RELEVANT PRIOR COUNTY ACTIONS:

On April 17, 2002, the BOCC adopted Ordinance #010-2002, which among other changes, amending the requirements related to processing building permits on sites with unlawful uses and improvements in MCC §6-26. The section was later renumbered as MCC §6-107.

At the time of this staff report, the Growth Management Division was in the process of amending MCC Chapter 6, Buildings and Construction, to abolish MCC §6-107.

### 1    III REVIEW

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3    The Growth Management Division is taking steps to eliminate MCC §6-107. The rationale  
4    for eliminating the section and its provisions relates to floodplain management issues, not  
5    land use issues. Monroe County has floodplain compliance programs to assure illegal post-  
6    FIRM structures below base flood elevation are remedied. A new Certificate of Compliance  
7    Program has been proposed to the Federal Emergency Management Agency (FEMA), which  
8    FEMA has indicated is acceptable to it as an alternative to "inspection upon permit". If  
9    ultimately approved, this program would result in MCC §6-107 as being unusable for  
10   floodplain management regulation enforcement.

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12   Although normally used as a mechanism to rectify floodplain management related violations  
13   on a site by withholding building permit approvals, the provisions set forth in MCC §6-107  
14   have also been utilized as a mechanism to rectify land use related violations. There is not a  
15   regulation with similar language in the Land Development Code. If the text amendment  
16   eliminating MCC §6-107 is ultimately approved, the Land Development Code must be  
17   amended to provide a building permit plan reviewer, such as planner or biologist, with an  
18   option to deny or fail a permit if there is a known unlawful use on the site. Doing such  
19   would not be inconsistent with the rationale for eliminating MCC §6-107, as that amendment  
20   is being carried out for legalities specifically associated with floodplain management, not  
21   land use. Further, as land use is controlled by regulations in the Land Development Code,  
22   not in MCC Chapter 6, such a regulation would be more appropriately located in the Land  
23   Development Code.

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25   As a note, this proposed amendment is not contingent on the elimination of MCC §6-107. If  
26   it is decided that MCC §6-107 should remain, the provisions of this regulation would be  
27   consistent with those set forth in MCC §6-107 and the regulations would not necessarily be  
28   redundant in that they would not be located in the same chapter of the Monroe County Code.

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30   Planners and Biologists who review applications for land use issues need a specifically  
31   worded regulation to cite in order to withhold the issuance of a building permit (not related to  
32   improving a life and safety issue) on a site that has a known violation related to land use. It  
33   is inappropriate and contradictory for the County to allow improvements on a site that would  
34   facilitate or improve an unlawful use. Such approval could be viewed as a tacit approval of  
35   the unlawful use or a recognition that it is lawful. Further, the County needs mechanisms to  
36   eliminate non-approved unlawful uses that are beyond the time limitations of code  
37   enforcement. This proposed amendment uses the language of MCC §6-107 as a base. The  
38   only two notable differences are a) the proposed amendment applies to any unlawful use, not  
39   only those existing on the effective date of the ordinance establishing the section and b) the  
40   proposed amendment applies only to unlawful uses and not "improvements" which is an  
41   undefined term in the Land Development Code.

#### 42                    **Sec. 6-107. Unlawful uses and improvements.**

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44                    The term "unlawful use or improvement," as used in this section, means any use or  
45                    improvement existing on the effective date of the ordinance from which this section  
46                    is derived, that is capable of code enforcement prosecution under chapter 8. Except  
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1 for building permits that are limited exclusively to addressing imminent risks to  
2 property and public health and safety, no building permit shall be issued for any use  
3 or improvement involving all or any portion of a parcel of land as defined in part II of  
4 this Code that contains an unlawful use or improvement until the parcel is brought  
5 into compliance with the provisions of part II of this Code. By way of illustration and  
6 not limitation, permits may be issued for repairs and replacement of roof and other  
7 building structural components to the extent necessary to address imminent risks of  
8 property damage and to public safety and health, such as for, but not limited to, the  
9 repair of leaking roofs and damaged roofs, walls, foundation; and, violations of  
10 building, mechanical, and electrical codes. Any such permit shall contain a provision  
11 requiring compliance with part II of this Code by the date specified in the permit.  
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13 Therefore, staff recommends the following changes (Deletions are ~~stricken-through~~ and  
14 additions are underlined. Text to remain the same is in black):  
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16 **Sec. 110-144. Unlawful uses and development.**  
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18 A lawfully established use means a use that has received a permit or other official approval  
19 from the division of growth management. The term unlawful use, as used in this section,  
20 means any use that has not received a permit or other official approval from the division of  
21 growth management and is thereby capable of code enforcement prosecution under chapter 8.  
22 Except for building permits that are limited exclusively to addressing imminent risks to  
23 public health and safety, the planning department shall not approve any building permit  
24 application for an improvement involving all or any portion of a parcel of land as defined in  
25 section 101-1 that contains an unlawful use until the unlawful use is terminated or is  
26 permitted in accordance with the Land Development Code. By way of illustration and not  
27 limitation, building permit applications may be approved for repairs and/or replacement of  
28 roof, other building structural components, plumbing and/or electric – however only to the  
29 extent necessary to address imminent risks to public safety and health. Any such permit  
30 shall contain a provision requiring compliance with the Land Development Code by a date  
31 specified in the permit, as determined by the planning director.  
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33 **IV RECOMMENDATION**  
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35 Staff has found that the proposed text amendment would be consistent with the provisions of  
36 §102-158(d)(5)(b): 1. Changed projections (e.g., regarding public service needs) from those  
37 on which the text or boundary was based; 2. Changed assumptions (e.g., regarding  
38 demographic trends); 3. Data errors, including errors in mapping, vegetative types and  
39 natural features described in volume I of the plan; 4. New issues; 5. Recognition of a need for  
40 additional detail or comprehensiveness; or 6. Data updates. Specifically, staff has found that  
41 the proposed text amendments are necessary due to new issues and a recognition of a need  
42 for additional detail or comprehensiveness.  
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44 Staff recommends that the Board of County Commissioners amend the Monroe County Code  
45 as stated in the text of this staff report.